

House Judiciary Committee
March 16, 2010 Hearing on House Bill 5676
Testimony of Tom Boyd
Chief Judge, 55th District Court

Chair Meadows, Representatives,

I'm Tom Boyd, Chief Judge of the 55th District Court, for Ingham County. I am joined today by my colleague Beth Gibson, Chief Judge of the 92nd District Court for Mackinac and Luce Counties. We represent the Michigan District Judges Association. Thank you for the opportunity to address you on the important topic of criminal defense for the indigent.

The MDJA accepts the American Bar Association's Principles of a public defense delivery system. We acknowledge Michigan's current system can be better; we are concerned about the details of any proposed new system; and we are very interested in participating in an open real dialog toward positive change.

The ABA's 10 Principles on indigent defense provide us clear direction. Any changes to our system of indigent defense should accept these principles. In keeping with these principles, we support the concept that defense attorneys will have funding for appropriate technology, experts, investigators, and training. We embrace the goals of an independent defense with resource parity with the prosecution. The MDJA believes defense counsel should not be reliant upon appointment by the judge before whom they practice.

MDJA membership includes judges statewide. Our members come from single judge courts and those with multiple judges. We have discussed the variety of approaches to court appointed counsel that have developed within our courts and local funding units. We know better than most that this patchwork does not do enough to ensure consistent application of the ABA principles. We are, therefore, dedicated to change.

Further, we know we can do better. We know this because some courts, frankly, do more today than others. In SCAO Region II (which covers central and southwest Michigan) there is tremendous discrepancy in funding and approach. Court reports filed with SCAO indicate that spending on indigent defense in our region ranges from \$19,208 per judge in one court to \$211,776 per judge in another.

Some courts comply with all 10 of the ABA principles . . . while most do not. Many courts are working toward full compliance. Again, members of the MDJA are dedicated to positive change.

However, while we are dedicated to change, we are very concerned about the details of any new approach. We are concerned that indigent defense legislation may throw the baby out with the bath water. Indigent defendants receive excellent representation in many Michigan courts. For example, court appointed counsel in my courtroom analyze each case and pursue the appropriate

strategies for just resolution. This has resulted in selection of ten juries since January 2009. These jury selections have resulted in one (1) guilty plea after jury selection, two (2) cases nolle prosequi'd (dismissed by the prosecution) after jury selection and seven (7) not guilty verdicts. That is a 90% exoneration rate by court appointed counsel when negotiations could not fairly resolve a criminal case. It is important to what is good in our current system.

MDJA members have raised additional concerns about a statewide system in general and the current bill in particular. These concerns include the following:

We see a need for people above the poverty level to also be eligible for court appointed attorneys. Many current district court systems offer court appointed counsel to individuals with income higher than the poverty level – and higher than the levels that would be covered by the current version of HB 5676.

We know that you are concerned about the cost of providing criminal defense to the indigent and the means of funding any new program. We share this concern. We are specifically concerned with funding proposals that increase the district court's role as tax collector – a position none of us are too comfortable with.

We are concerned about the loss of local control to a statewide system. With local control as we have now, judges appoint an **appropriate** attorney. We believe that any process for performance review of defense attorneys should include reviews from the judges. We are further concerned that the loss of local control will dramatically increase delays for our courts, these defendants and victims of crime. We are also concerned about the size of the bureaucracy needed to administer this program on a statewide level. We are concerned about unintended consequences with each legislative proposal we have heard.

Finally, because of our willingness to change and the concerns we have raised, we are very interested in participating in a dialog towards positive change. Again, we thank you for the opportunity to be heard at this hearing. We have offered to participate in work groups or other discussions concerning the shortcomings of the current system and possible improvements. We reiterate that offer here today. These are complicated issues. We believe that positive change is most likely to occur if prosecution, defense, courts and funders are all at the table for an open discussion.

Thank you. Judge Gibson . . .